REMARKS

In the Office Action mailed 3/6/2006, Claims 1-20 were rejected as being anticipated by the prior art under 35 U.S.C. §102(b).

The Examiner further objected to the oath or declaration (*see Office Action Summary*), but the referred-to PTO-152 was not included in the mailing. Clarification is requested.

Patentability of Independent Claims 1 (method – fantasy gaming), 8 (system for providing fantasy sports game) and 14(method – ad hoc duel fantasy gaming system)

These Claims are all rejected as being anticipated under 35 U.S.C. §102 (b) by *Junkin*. Applicant respectfully traverses these rejections for the reasons set forth below after the discussion of the teachings of this reference.

Junkin, U.S. Patent No. 5,846,132

Junkin discloses an "Interactive System Allowing Simulated or Real Time Participation in a League." In fact, Applicant is aware of *Junkin* and disclosed this reference in the context of an Information Disclosure Statement filed along with the original application.

Junkin concerns itself, not with any novel approach to challenging, scoring or determining the outcome of a system of fantasy sports leagues, but rather "is more particularly concerned with such a system which has an option for a league based competition and/or scoring between participants of similar skill level in different categories of competition." *Col. 1, lines 10 – 13.*

The *Junkin* method is summarized at *Col. 2, line 64 – Col. 3, line 8* as having the following steps:

"(a) . . . generating real time score values indicative of performances of players involved in the event,

(b) . . . conveying to each participant the real time score values of the players,

(c) . . . selecting at least one member of the event to comprise a team for each participant of the interactive system"

The system may optionally include step:

"(d) . . . grouping the participants into categories or leagues based, e.g. on accumulated score values."

As discussed in Applicant's original Specification, leagues of fantasy sports teams have been a popular pastime for quite some time. Converting individual player performances (hereinafter performance points) into fantasy sport team owners' team points (hereinafter owners' points) was traditionally executed manually by the fantasy sports league commissioner. With the evolution of the World Wide Web, it was a natural progression that the manual scoring process was replaced with computerized methods. A side benefit was that fantasy sport team owners were no longer confined to competing with other local fantasy sport team owners, for the WWW does not (at least in this context) have such boundaries.

Junkin, like the other "references" cited by the Examiner is simply an example of an architecture and operating method for such a "plain Jane" online fantasy sports system. All of these "prior" systems have five basic steps:

1. an owner creates a team by some method;

2. owners are either included in a league or are simply in a pool with other owners;

3. the real players perform to generate performance points;

4. performance points are converted to owners' points (by the gaming method) by attributing the performance points to only those teams that selected a particular player generating the points; and

5. over the course of a period (e.g. a season), owners are ranked by their cumulative owners' points.

Essentially, the only benefit touted by *Junkin* provided by its system over its predecessors was to "allow real time interaction," for example to "decide whether or not to keep Petty as he is passing other cars or is being passed." *See Col. 1, lines 58 – 60.*

Operational Distinctions

In order to make the patentability distinctions between *Junkin* and the present invention more clear, the undersigned will first provide additional background to the conventional fantasy sports scoring method as contrasted with the fantasy sports scoring method of the present invention.

Junkin, discloses the typical conventional fantasy sports scoring method, an example of which follows:

Fantasy Team Name	Week 1	Week 2	Week 3	Total
Team A	10 owpts	10 owpts	10 owpts	30 owpts
Team B	12 owpts	5 owpts	7 owpts	24 owpts
Team C	5 owpts	7 owpts	12 owpts	24 owpts
Team D	7 owpts	12 owpts	5 owpts	24 owpts

Conventional Fantasy Sports Scoring Method

Under the conventional method, the team with the most owners' points wins. As such, Team A fantasy owner would prevail in this grouping (whether in a league or "at large"), since Team A accumulated the most owner points through the 3-week "season."

Claimed Fantasy Sports Scoring Method

Under the methods and systems of the presently claimed invention, there is an added step conducted prior to determining what the owners' points are, namely the formation of a "duel." A "duel" is the result of a one-on-one challenge between two fantasy team owners. Defined a simply as that, there is no requirement that all teams duel all other teams. An example outcome of such a system using the previously-detailed results could be:

Week 1 Duels (result)	Week 2 Duels (result)	Week 3 Duels (result)
A & B (B 1 owpt)	A & D (D 1 owpt)	A & C (C 1 owpt)
C & D (D 1 owpt)	C & D (D 1 owpt)	B & C (C 1 owpt)

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D & B (B 1 owpt)   D & B (B 1 owpt)

The final 3-week season results would then be:

      A   0 owpts

      B   3 owpts

      C   2 owpts

      D   2 owpts

The difference is apparent, even in this simple example. Here, Team A would have won and Teams B – D would have tied for second under the conventional system. Under the system claimed by the Applicant, however Team A would end up in last place, with Team B winning the season. If the various team owners had engaged in duels with different team owners, a different result would no doubt have occurred.

Applicant's Claimed Invention

Applicant's claim 1, for example recites:

"In a network of computing devices comprising two or more participant client computers in communication with a host computer system over a computer network, a fantasy gaming method executed by said host computer system for interaction therewith at said participant client computers, the method comprising the steps of:

    a first participant creating a first team via one said participant client computer;

    a second participant creating a second team via one said participant client computer;

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a challenge to engage in a fantasy game issued by said first team to said
second team; and

an acceptance of said challenge by said second team."

Applicant has reviewed the Examiner's citations from *Junkin* in the context of his
Office Action, and respectfully asserts that neither the "challenge" step, nor the "acceptance
of said challenge step" is disclosed, hinted at or suggested by *Junkin*.

Repeatedly, the Examiner has cited the following location within *Junkin* for his conclusions:

5,846,132

INTERACTIVE SYSTEM ALLOWING SIMULATED OR REAL TIME PARTICIPATION IN A LEAGUE

TECHNICAL FIELD

This invention relates to an interactive contest system, which allows participants to optimize the performance of their teams based on the performance of team members, in real time, through selection and trading of players in an event. The invention is more particularly concerned with such a system which has an option for a league based competition and/or scoring between participants of similar skill level in different categories of competition.

BACKGROUND ART

Professional or college sports support a broad scope of secondary competitions ranging from predicting the outcome of particular games to predicting the performance of a given player. Contests based upon player performance include fantasy sports leagues such as fantasy baseball and fantasy football. In fantasy sports leagues, sometimes called "rotisserie leagues", participants assume the position of an owner of an imaginary team. Prior to the beginning of a professional sport season, the owners conduct a "draft" of professional athletes to fill the roster of their team.

As in professional sports leagues, fantasy owners may trade players during a contest. Typically, after the draft, and throughout the season, trades are made between owners of those players not selected in the initial draft. The teams in a fantasy sports league typically accumulate a "won-lost" record by competing head to head against each of the other teams in the league. In a "game" between two teams, the team whose players performed better in the previous week is declared the winner. Typically, each team competes on the cumulative statistics of the drafted players.

U.S. Pat. Nos. 5,018,736 and 5,263,723 describe an interactive contest system using publication of newspapers and broadcast of events to enable fantasy owners to optimize scores obtained by a team through team member trades. However, the system is not interactive on a real time basis. As interaction with the contest system on a real time basis with the sporting events is characterized as being disadvantageous, the described contest system utilizes selection and trading of players based on periodic publications or broadcasts.

Periodic interaction of participants prevents optimization of team roster performance and enjoyment of the interactive system. In the above system, participants select and make member changes only after the event has ended for the day. For example, in a FANTASY NASCAR race, a participant must decide prior to the race whether to select or trade a racer, such as Tom Petty, and then wait until after the race is over to see the result of the race car driver's performance. If the system distributes scores for the number of other cars Petty passes, the participant must wait until the end of the day as to whether to keep or trade Petty.

On the other hand, if the system were to allow real time interaction, the participant could decide whether or not to keep Petty as he is passing other cars or being passed. If the participant believes that Petty will pass more cars, he or she may decide to keep Petty as a member of the team. If the participant believes that another car driver, such as Steve Andretti, will pass more cars than Petty, the participant can trade Petty for Andretti.

Once the participant has made a decision, he or she can watch the race with excitement as to whether that decision

is the right or the wrong one. Further, as the race goes on, the participant can make more trades to optimize the performance of his or her team roster. By allowing a participant to interact in real time while the race is going on, the participant can better maximize the score values for the team, and experience more emotional and intellectual enjoyment compared to what is likely in a periodic interaction. Hence, there is a need for an interactive system allowing real time interaction as the event unfolds.

There may be a desire to group the participants into "leagues" such that the participant competes against others of similar skill level. If an interactive system does not allow leaguing of participant, there may be a great disparity between an advanced participant and a beginner. Most likely, the beginner may become discouraged knowing that his/her chances of winning a prize are slim to none while the advanced participant may lose interest due to lack of competition. A leaguing/selection of participants at similar skill level would enhance the enjoyment of the interactive game. Each participant may have a more realistic opportunity to win a prize or to be awarded recognition. Further, the possibility of winning and game enjoyment is may be further increased if the participants were allowed to compete in leagues at a national, regional, state, local and/or city/town level.

DISCLOSURE OF THE INVENTION

An advantage of the present invention is in increasing the enjoyment of an interactive game.

Another advantage of the present invention is an improved interactive system allowing participants to interact with a game in an event occurs in real time.

Another advantage of the present invention is to maximizing the total points generated by a team selected by a participant.

Another advantage of the invention is in increasing interaction between the participant, the event and interactive system by allowing the participant to select and trade members as the event unfolds in real time.

A further advantage is in increasing both the intellectual and emotional enjoyment to a participant viewing an event such as a sport.

Still a further advantage of the invention is in increasing the level of skill and knowledge of a participant to an event such as a sport.

Still a further advantage of the invention is in leaguing participants with others of similar skill, knowledge and/or experience to enhance the level of enjoyment and to increase the chances of winning prizes/recognition.

Still another advantage of the invention is in allowing participants to compete at a national, regional, state, local and/or city/county level.

According to the present invention, the foregoing and other advantages may be achieved in part by an interactive game system having means for generating real time score values indicative of performance of players involved in an event, means for enabling participants of the interactive game system to accumulate scores based on real time score values, and means for allowing participants of the interactive game system to compete against each other based on the accumulated scores. The system may further include means for grouping the participants into categories or leagues of participants having similar accumulated scores.

A method for playing an interactive game based on an event occurring in real time comprises step (a) for generat-

Specifically, here are the Examiners references to this citation (at least those of import):

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that
form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1.   Claims 1 – 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Junkin
(U.S. Patent 5,846,132).

Regarding Claims 1, 9, 14 and 20, Junkin discloses a network of computing
devices comprising two or more participant client computers (col. 18, lins. 44 – 46;
where a player operating a personal computer registers a team and is a client
participating in a game) in communication with a host computer (col. 18, lin. 43) over a
network (col. 18, lins. 47 – 48) with data storage storing information relating to
performance of the players in actual competitive events (col. 16, lins. 31 – 33; where a
central server tracks actual game statistics throughout a season and stores game data
for remote access by any player), a fantasy gaming method executed by said host
computer for interaction therewith at said participant client computers (col. 18, lins. 37 –
39; where host and client computers as described above interact to provide a game).
Junkin also discloses multiple participants creating multiple respective teams via
multiple respective client computers (col. 19, lins. 7 – 9; where individual participants up
to a specified maximum number build up and recruit for their respective teams) where a
first team issues a challenge to engage in a fantasy game issued by said first team to

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said second team and an acceptance of said challenge by said second team (col. 1, ① lins. 29 – 33; where a host computer matches teams for play and automatically challenges teams during a regular season). The method solicits and accepts from each participant an initial selection and purchase of players to form the participant's fantasy sports team (col. 5, lins. 21 – 27; where each participant enters a draft to select players for the above team) including a wager (col. 2, lins. 19 – 21; where players may win prizes that may be set up through participants' initial wagers).

Regarding Claims 2 – 3 and 15 – 16, Junkin discloses a game method where a first team challenges a second team to engage in a fantasy game at a future date (col. ① 1, lins. 29 – 33; where challenges, also called team match-ups, are set before the *NOT FOUND AT CITED LOCATION* following week's games are played within a participant's lineup and scores are updated based on game results); and where an acceptance step is preceded by a second team *NOT FOUND AT CITED LOCATION* issuing a counterchallenge to a first team, and said acceptance step is an acceptance of said counterchallenge by said first team (col. 1, lins. 29 – 33; where challenges, counterchallenges, and acceptances of challenges and counterchallenges are inherently handled automatically by teams and a game host at a central site when team schedules are formed).

Regarding Claims 4 – 7, 9 – 11 and 17 – 19, Junkin discloses a game method *NOT FOUND AT CITED LOCATION* where a challenge creates a first duel (col. 1, lins. 29 – 33; where teams are matched up to play against each other each week of the fantasy season) where a victor is determined by performance results of actual players in an actual sporting event (col. 16, lins. 31 – 33; where a player's team whose team members collectively score the most

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points in a game is awarded with a win for that game). Also, a third participant creating
a third team via one said participant client computer where said third team may engage
in a second duel with either first or second team, and where a plurality of said teams
engage in a plurality of said duels (col. 1, lins. 29 – 33; where multiple teams may
participate and all teams play more than one other team, simulating actual play of teams
in a regular football season) to determine win-loss records for each said team
responsive to victors and non-victors of said duels (col. 1, lins. 29 – 33; where a team
accrues wins and losses based on a comparison between scores of dueling teams
during a particular game). Performance classification groups of teams are defined
responsive to the strength of duel schedule of said respective teams (col. 2, lins. 10 –
12, where teams are ranked based on their strength in winning against other teams
during the regular season) and a playoff schedule is created between teams having the
highest performance classification (col. 11, lins. 27 – 32; where teams qualify or do not
qualify for an All Star reorganization which is similar to playoffs in a fantasy league
incorporating a postseason based on regular season rank).

(handwritten: NOT FOUND AT CITED LOCATION)

A casual observer can see that the cited section of _Junkin_ fails to suggest the duel-based system of Applicant's claimed invention. As a result, the Examiner has failed to meet his burden of making out a prima facie case of anticipation.

By combining the elements of various well-known decisions, one can see that a prima facie case of anticipation is established only when the Examiner provides:

1. a single reference[1]

2. that teaches or enables[2]

3. each of the claimed elements (arranged as in the claim)[3]

4. expressly or inherently[4]

5. as interpreted by one of ordinary skill in the art.[5]

If the Examiner fails to produce a prima facie case of unpatentability, "then without more the applicant is entitled to the grant of the patent."[6]

Here, the single cited reference fails to teach or enable each of the claimed elements in any way to anyone, and therefore the prima facie case of anticipation fails, and this ground for rejection must be removed.

Furthermore, the undersigned notes that the Examiner has cited, yet not relied upon two other references, namely _Soltesz_ (reference A) and _Yahoo_ (reference U). Both of these

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[1] _W.L. Gore & Assocs. v. Garlock_, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), _cert. denied_, 469 U.S. 851 (1984).

[2] _Akzo N.V. v. U.S. Int'l Trade Comm'n_, 808 F.2d 1471, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986) (citing _In re Brown_, 329 F.2d 1006, 1011, 141 USPQ 245, 249 (CCPA 1964).

[3] _Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co._, 221 USPQ at 485.

[4] _Continental Can Co. USA v. Monsanto Co._, 20 USPQ 2d at 1749-50.

[5] _Scripps Clinic & Research Found. v. Genentech Inc._, 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991).

[6] _In re Oetiker_, 977 F.2d 1443, 24 USPQ 2d 1443 (Fed. Cir. 1992).

references fail to disclose or hint at Applicant's claimed duel-based scoring system and method. Furthermore, absent further evidence from the Examiner, Applicant challenges that the *Yahoo* reference is even a prior art reference, in that its effective date is 2/23/2006 (the date that is was printed by the Examiner), since there is no proof as to the disclosure's content as of the effective date of Applicant's application (beyond a self-serving copyright notice of 2001). Should the Examiner continue to cite this reference, Applicant respectfully requests that he provide evidence regarding the date of effectiveness of the *Yahoo* reference if an when it is relied upon for future claim rejections.

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Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests that the application be reconsidered, the claims be allowed, and the case passed to issue.

Respectfully submitted,

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